

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES JONES,
Plaintiff,

v.

CURTIS ALLEN, et al.,
Defendants.

No. 2:20-cv-1984 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. ECF Nos. 1, 2. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1)(B).

Plaintiff has also filed a motion to amend the complaint. ECF No. 7. For the reasons stated below, the motion to proceed in forma pauperis and the motion to amend will be granted. Plaintiff will also be provided with specific directions about how file an amended complaint properly.

I. IN FORMA PAUPERIS APPLICATION

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). See ECF Nos. 2, 5. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

II. MOTION TO AMEND

Plaintiff has moved to amend the complaint so that he may add another defendant to this action. See ECF No. 7 at 1. No other information is provided.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Because plaintiff filed the instant motion to amend within a reasonable period after he filed the original complaint, the court will grant the motion to amend and screen the amended complaint instead of the original. See generally Fed. R. Civ. P. 15(a)(2). The amended complaint, however, must adhere to the guidelines below.

III. GUIDELINES FOR AMENDING THE COMPLAINT

The amended complaint will take the place of the original complaint. See Lacey v. Maricopa Cty., 693 F.3d 896, 925 (2012) (stating amended complaint supersedes original complaint). Any amended complaint should observe the following:

An amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation).

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1 An amended complaint must also contain a caption including the names of all
2 defendants. Fed. R. Civ. P. 10(a). Plaintiff may not change the nature of this suit by alleging
3 new, unrelated claims. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

4 Any amended complaint must be written or typed so that it is complete in itself without
5 reference to any earlier filed complaint. See L.R. 220 (E.D. Cal. 2009). This is because an
6 amended complaint supersedes any earlier filed complaint, and once an amended complaint is
7 filed, the earlier filed complaint no longer serves any function in the case. See Loux v. Rhay, 375
8 F.2d 55, 57 (9th Cir. 1967) (“The amended complaint supersedes the original, the latter being
9 treated thereafter as non-existent.”), overruled on other grounds by Lacey v. Maricopa Cty., 693
10 F.3d 896 (2012).

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The Clerk of Court shall send plaintiff a copy of the court’s Civil Rights Complaint
13 By A Prisoner form;


14 2. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is GRANTED;

15 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
17 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
18 appropriate agency filed concurrently herewith;

19 4. Plaintiff’s motion to amend the complaint (ECF No. 7) is GRANTED, and

20 5. Within thirty days of the date of this order, plaintiff shall file a first amended
21 complaint. Failure to file an amended complaint within the time allotted may result in the
22 dismissal of this action for failure to prosecute.

23 DATED: December 2, 2020

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25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE
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